

\*\*E-Filed 6/24/08\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IVAN VERNARD CLEVELAND,

Plaintiff,

v.

BEN CURRY, Warden, et al.,

Defendant.

Case Number C 07-2809 JF

ORDER<sup>1</sup> GRANTING PLAINTIFF  
LEAVE TO SUPPLEMENT OR  
AMEND HIS OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS AND FOR SUMMARY  
JUDGMENT

[re: docket no. 33]

**I. BACKGROUND**

On May 30, 2007, Plaintiff Ivan Cleveland, a state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. In separate written orders, this Court denied Plaintiff's motion to appoint counsel but granted Plaintiff's motion to proceed *in forma pauperis*. On November 2, 2007, this Court issued a partial dismissal order, which dismissed one defendant and directed the remaining defendants to file a dispositive motion within ninety days of the date of the order. The partial dismissal order granted Plaintiff thirty days from the date Defendants

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 filed to submit his opposition to the dispositive motion. Defendants were granted an additional  
2 fifteen days to reply to Plaintiff's opposition. The matter was to be deemed submitted as of the  
3 reply brief's due date; however, Defendants subsequently waived their right to reply.

4 There are two other pending motions in addition to Plaintiff's motion to stay the action  
5 and schedule a case management conference. On February 21, 2008, Plaintiff filed a motion  
6 against retaliation. On June 10, 2008, Plaintiff moved for financial relief and sanctions.

7 Because Cunningham substituted in as Plaintiff's counsel only two days before Plaintiff  
8 filed his opposition to Defendants' motion, Cunningham likely did not have sufficient  
9 opportunity to review the record or to assist Plaintiff in drafting the opposition. Thus, the Court  
10 will grant Plaintiff thirty (30) days to supplement or amend his opposition to Defendants' motion.  
11 The Court then will take the matter under submission without oral argument unless the parties  
12 are notified otherwise by the Court.<sup>2</sup>

13 SO ORDERED.

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15 DATED: 6/24/08

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18 JEREMY FOGEL  
19 United States District Judge  
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26 <sup>2</sup>There are two other pending motions in addition to Plaintiff's motion to stay the action  
27 and schedule a case management conference. On February 21, 2008, Plaintiff filed a motion  
28 against retaliation. On June 10, 2008, Plaintiff moved for financial relief and sanctions. These  
motions will be considered when the matter is taken under consideration.

1 This Order has been served upon the following persons:

2 Dennis Cunningham denniscunningham@juno.com, 4muddypaz@comcast.net,  
gordonk@hotmail.com, josh@fireflyjournal.com

3  
4 Kenneth T. Roost ken.roost@doj.ca.gov, docketingSFCLS@doj.ca.gov,  
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